IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

CRL.A.No. 424 of 2000()

CRA.121/1997 of ADDL. SESSIONS COURT, THRISSUR DT.10.1.99.
CC. NO.217/93 OF JUDICIAL IST CLASS MAGISTRATE COURT, KUNNAMKULAM.

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APPELLANT: RESPONDENT/ COMPLAINANT

WILSON, S/O.KOLADI MATHEWKUTTY,
PALACE ROAD, KUNNAMKULAM
VILLAGE, TALAPPILLY TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.A.X.VARGHESE
SRI.A.J.VARGHESE

RESPONDENTS: STATE & APPELLANT/ STATE & ACCUSED
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1. **STATE OF KERALA, REP.BY PUBLIC PROSECUTOR,**
HIGH COURT OF KERALA, ERNAKULAM.

2. **ANIL KUMAR, S/O.KOTTARAPATTU BALAN,**
CHIRAMANANGADU VILLAGE,
KIDANGOOR DESOM, TATAPILLY TALUK,
THRISSUR DIST.

3. **UNNIKRISHNAN, S/O.MULLEKKATTU KOTHA,**
KUNNAMKULAM VILLAGE, KAKKAD DESOM,
THALAPPILLY TALUK , THRISSUR.

BY ADV. SRI.RAJIT
PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 03/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

Crl. A.No. 424 of 2000

Dated 3rd July, 2007

JUDGMENT

Appellant is the complainant in C.C.No.217/93 in the court of JFCM, Kunnamkulam with respect to the offence under section 420 read with 34 IPC.

2. The prosecution case is that the accused, 2 in number deceived the complainant by inducing him to purchase an autorickshaw misrepresenting that the vehicle is owned by A1 and that an amount of Rs.10,000/- was handed over by the complainant as advance on 16-11-92 and later, on 15-2-93, the balance sum of Rs.6000/- was also paid by the complainant. But subsequently on 13-5-93, the vehicle was seized by financier towards the amount due from the R.C.owner one Sajeevan. The trial court convicted the accused. The appellate court set aside the conviction and acquitted the accused on the ground that from the recitals in Ext.P1 complaint, it could not be found that there was misrepresentation on the part of A1 that he

was the R.C.owner of the vehicle. Further, the complainant could not establish that he paid Rs.6000/- on 15-2-93. Further it is seen that PW-1 when examined has testified that the amount of Rs.6000/- was paid on 15-3-93 and PW-2 the alleged occurrence witness has testified that the amount was paid on 15-2-93 whereas there is no receipt for the payment. It is hard to believe the version of PW-1, the complainant, that he executed Ext.P1 agreement and handed over Rs.10,000/- without verifying the R.C. It is equally unbelievable that he further paid a sum of Rs.6000/- without obtaining any receipt. In the circumstances, from the version in Ext.P1 that the vehicle belonged to A1 and that he is in possession and is having the right to alienate the vehicle, it can only be understood that he is having right to possess the vehicle and not that he is the owner of the vehicle. In the normal course of human conduct, the purchaser would have verified the title deed before entering into the transaction. In the circumstances, I find that the decision of the appellate

court that the required ingredients of cheating has not been established do not call for interference. The appeal is dismissed.

K.R.UDAYABHANU,
JUDGE.

Kvm/-

K.R. UDAYABHANU, J.

CRL.A. 424 OF 2000

JUDGMENT

3-7-2007.